

# FEDERAL REGISTER

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*Washington, Saturday, January 14, 1939*

## *The President*

### CORRECTING A PORTION OF PROCLAMATION ENLARGING THE MARQUETTE NATIONAL FOREST—MICHIGAN

BY THE PRESIDENT OF THE UNITED STATES  
OF AMERICA

#### A PROCLAMATION

WHEREAS errors have been discovered in the following paragraph contained in Proclamation No. 2313 of November 25, 1938,<sup>1</sup> enlarging the Marquette National Forest in the State of Michigan:

"The Executive Orders of July 21, 1874, and October 20, 1874, withdrawing public lands for lighthouse purposes are hereby revoked, and Executive Order No. 4430 of April 23, 1926, withdrawing public lands for classification, is hereby revoked in so far as it affects any of the above-described lands:"

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do proclaim that the aforesaid paragraph is hereby corrected to read as follows:

"The Executive Order of July 21, 1874, withdrawing public lands for lighthouse purposes, is hereby revoked. The Executive Order of October 20, 1874, withdrawing public lands for lighthouse purposes, and Executive Order No. 4430 of April 23, 1926, withdrawing public lands for classification, are hereby revoked in so far as they affect any of the above-described lands."

And I do further proclaim that the aforesaid Executive order of October 20, 1874, is hereby reestablished, subject to the modification thereof made by this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 11<sup>th</sup> day of December in the year of our

<sup>1</sup> 3 F. R. 2799 DL

Lord nineteen hundred and thirty-eight, and of the Independence of the United States of America the one hundred and sixty-third.

FRANKLIN D ROOSEVELT

By the President:

CORDELL HULL

Secretary of State.

[No. 2319]

[F. R. Doc. 39-162; Filed, January 13, 1939; 11:13 a. m.]

## *Rules, Regulations, Orders*

### TITLE 10—ARMY

#### WAR DEPARTMENT

#### CHAPTER III—CLAIMS AND ACCOUNTS

#### PART 36—CLAIMS AGAINST THE UNITED STATES<sup>1</sup>

##### General Provisions

SEC. 36.02 *Definition.* The word "claims" as used in these regulations refers only to those demands for payment submitted by individuals, companies, or corporations, which do not arise under the ordinary obligations entered into by the War Department or its purchasing agents in the procurement of services or supplies. (R. S. 161; 5 U. S. C. 22) [AR 35-7020, Dec. 1, 1938]

SEC. 36.03 *Classification.*—(a) *General.* Claims may be divided into two general classes (1) those for damages to persons or property arising through the activities of the Army or War Department, and (2) those arising under contractual relations.

(b) *Claims for personal injury.* No provision has been made for the settlement by the War Department of claims

<sup>1</sup> Sections 36.02 to 36.11 and 36.14 supersede the sections bearing the same numbers in Title 10, Code of Federal Regulations. Sections 36.05a, 36.06a, 36.07a, 36.07b, 36.14a, 36.14b, and 36.18 to 36.23 are added to Title 10, Code of Federal Regulations.

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for damages for personal injury, except in the case of personal injury inflicted in the operation of aircraft, as provided in the annual appropriation acts. (See paragraph (d), section 36.05). However, all other claims for personal injury will

be investigated by a board of officers and reported upon in the same manner as claims for property damage in order that information relative thereto may be on hand in the War Department for future use. (R. S. 161; 5 U. S. C. 22) [AR 35-7020, Dec. 1, 1938]

Sec. 36.04 *Principle of law involved.* A principle of law held by the legislators of the United States from the time of the foundation of the Union is of importance in the consideration of any claim. The principle is that, unless so entitled under a contract, no person can have a legal claim against the United States for personal injuries or damage to property. In general, Congress has held consistently to this principle and, except in certain classes of cases enumerated in section 36.05, it is necessary for a claimant who seeks relief to ask Congress to grant him compensation as an act of grace. (R. S. 161; 5 U. S. C. 22) [AR 35-7020, Dec. 1, 1938]

Sec. 36.05 *Laws granting authority for the settlement of claims by the Secretary of War.* The authority of the Secretary of War to settle claims is granted in certain laws quoted herein after in the body of the regulations to which they relate, but are mentioned briefly here.

(a) *Claims incident to field exercises.* The act approved May 15, 1936 (49 Stat. 1281) and subsequent annual appropriation acts, authorize the settlement of claims (not exceeding \$500 each) for damages to or loss of private property resulting from special field exercises. See sections 36.18 to 36.20.

(b) *Claims incident to the training, practice, operation, or maintenance of the Army.* The annual appropriation act approved June 30, 1922 (42 Stat. 725); 5 U. S. C. 209, 31 U. S. C. 223, and subsequent annual appropriation acts as amended, authorize the payment of claims, including those of military and civilian personnel in and under the War Department not exceeding \$500 each in amount for damages to or loss of private property, incident to the training, practice, operation, or maintenance of the Army. See sections 36.09 to 36.11.

(c) *Claims incident to heavy gun-fire, target practice, etc.* The act of August 24, 1912 (37 Stat. 586); 5 U. S. C. 208 authorizes the Secretary of War to consider, ascertain, adjust, and determine the amounts due on all claims for damages to and loss of private property when the amount of the claim does not exceed the sum of \$1,000, occasioned by heavy gunfire and target practice of troops, and for damages to vessels, wharves, and other private property found to be due to maneuvers or other military operations for which the Government is responsible, and to report the amounts so ascertained and determined to be due the claimants to Congress at each session thereof, through the Treasury Department (Director of the Budget) for payment as legal claims out of ap-

propriations that may be made by Congress therefor. See sections 36.21 to 36.23.

(d) *Claims incident to the operation of aircraft.* The annual appropriation act approved June 30, 1921 (42 Stat. 73); 31 U. S. C. 224, and subsequent annual appropriation acts, authorize the settlement of claims not in excess of \$250 each for damage to persons and private property resulting from the operation of aircraft. See paragraph (a) (4), section 36.05a and sections 36.12 to 36.14b.

(e) *Claims incident to the negligence of any officer or employee of the Government.* The act of December 28, 1922 (42 Stat. 1066); 31 U. S. C. 215-217; authorizes the head of each department and establishment to consider, ascertain, adjust, and determine any claim, not in excess of \$1,000, accruing after April 6, 1917, on account of damages to or loss of privately owned property caused by the negligence of any officer or employee of the Government acting within the scope of his employment. Under this law payment is to be made from appropriations subsequently provided by Congress. See sections 36.14 to 36.14b.

(f) *Claims under the one hundred and fifth article of war.* The one hundred and fifth article of war, act June 4, 1920 (41 Stat. 808); 10 U. S. C. 1577 provides for the settlement of claims for property damaged or wrongfully taken by persons subject to military law. See sections 36.15 to 36.17.

(g) *Real estate claims.* Claims for damages arising from use and occupancy of real estate under an express or implied contract are not damage claims in the ordinary sense and there is no specific law providing for their settlement, except as may be provided for in paragraph (a) above. See section 52.09.

(h) *Claims incident to river and harbor works.* The river and harbor act of June 5, 1920 (41 Stat. 1015); 33 U. S. C. 564 gives the Chief of Engineers, with the approval of the Secretary of War, authority to adjust and settle claims for damages to property caused by agencies of the United States engaged upon river and harbor works when such claims do not exceed \$500 in amount. It also authorizes the Chief of Engineers, with the approval of the Secretary of War, to report to Congress any claim in excess of \$500 upon which a satisfactory agreement has been reached between the Chief of Engineers and the claimant. (R. S. 161; 5 U. S. C. 22) [AR 35-7020, Dec. 1, 1938]

Sec. 36.05a *Application of regulations—(a) General.* The following general principles will govern in determining which regulations have application to any claim:

(1) (i) Claims not exceeding \$500 in amount arising as a result of special field exercises of the Army, including claims for reimbursement for damage to

or loss of private property caused by the negligence of any officer or employee of the Government or of the National Guard or of the Organized Reserves, while acting within the scope of his employment and engaged or participating in such special field exercises, will be considered under the provisions of sections 36.18 to 36.20.

(ii) Claims of subrogees for damage to or loss of private property caused by the negligence of any officer or employee of the Government or of the National Guard or of the Organized Reserves acting within the scope of his employment and while engaged or participating in special field exercises may be considered under the provisions of sections 36.18 to 36.20 similarly as a claim of the owner of the property.

(2) Claims not exceeding \$500 in amount, incident to the training, practice, operation, or maintenance of the Army, but not involving negligence will be considered as within the scope of sections 36.09 to 36.11. See sec. 807 (1 and 2), Dig. Ops. J. A. G. 1912-1930, p. 376.

(3) Claims exceeding \$500 and not exceeding \$1,000 in amount occasioned by heavy gunfire and target practice of troops, and for damages to vessels, wharves, and other private property found to be due to maneuvers or other military operations for which the Government is responsible, not involving negligence, will be considered as within the scope of sections 36.21 to 36.23.

(4) Claims resulting from the operation of aircraft—

(i) Not exceeding \$250, exclusively for damage to persons, involving negligence, will be considered under the provisions of sections 36.12 and 36.13.

(ii) Not exceeding \$250, for damages to private property, or to persons and private property, but not involving negligence, will be considered as within the scope of sections 36.12 and 36.13.

(iii) Not exceeding \$1,000, for damage to private property, involving negligence, if the negligence occurred within the scope of the employment, will be considered as within the provisions of sections 36.14 to 36.14b.

(iv) Which exceed \$250, but do not exceed \$1,000, for damage to private property, and do not involve negligence, will be considered under the provisions of sections 36.09 to 36.11 or 36.21 to 36.23 whichever is applicable.

(v) While engaged on special field exercises not exceeding \$500, for damage to private property, whether or not caused by negligence, will be considered under sections 36.18 to 36.20. In excess of \$500, but not exceeding \$1,000, for damage to private property, if not caused by negligence, will be considered under sections 36.21 to 36.23; but if caused by negligence, will be considered under sections 36.14 to 36.14b.

(5) (i) Claims not exceeding \$1,000 in amount arising from negligence of any officer or employee of the Government

acting within the scope of his employment will be considered as within the scope of sections 36.14 to 36.14b. See sec. 807 (1 and 2), Dig. Ops. J. A. G. 1912-1930, p. 376.

(ii) Claims of subrogees for damage to or loss of private property caused by the negligence of any officer or employee of the Government acting within the scope of his employment may be considered under the provisions of sections 36.14 to 36.14b similarly as a claim of the owner of the property. See 36 Atty. Gen. 553, June 29, 1932, and Ops. J. A. G. No. 60, July 21, 1932.

(6) Where loss of or damage to property has occurred through depredation, willful misconduct, or such reckless disregard of property rights as to carry an implication of guilty intent, committed by persons subject to military law, such loss or damage cannot be regarded as having been caused by such persons acting within the scope of their employment, and no legal claim arises against the Government, but the guilty individuals are personally liable to the owners for such loss or damage, and claims therefor, if such individuals are members of the military service, in any amount, are cognizable under the one hundred and fifth article of war and sections 36.15 to 36.17. Where, upon investigation of any such claim, it is found that the case is one of simple negligence, whether within or beyond the scope of employment, the one hundred and fifth article of war does not apply. (See secs. 807 and 808, Dig. Ops. J. A. G. 1912-1930, pages 376 and 377.) In the latter event, if the negligence occurred within the scope of employment, a claim may be entertained against the Government under sections 36.14 to 36.14b but where the negligence was simple and beyond the scope of employment, none of the statutes herein mentioned has any application, and the claimant is necessarily relegated to his ordinary civil remedies.

(b) *Claims greater in amount than that allowed by the controlling statute.* Claims greater in amount than that allowed by the controlling statute, unless voluntarily reduced by the claimant, will be handled under the provisions of section 36.07a.

(c) *Claims of subrogees.* Subrogation will be recognized only in connection with those claims for damage to private property which are based upon negligence. See paragraphs (a) (1) (ii) and (a) (5) (ii) above.

(d) *Claims involving errors of judgment.* Where a determination of negligence on the part of officers or employees of the United States acting within the scope of their employment, or of mere errors of judgment not amounting to negligence, may be made with equal propriety, all doubts will be resolved in favor of a holding that will accomplish prompt payment, and the claim, if otherwise established, will be deemed to be within the purview of the

applicable authority of law as mentioned in section 36.05 authorizing the settlement of those claims which are non-negligent in character. See paragraph (a) above.

(e) *Basic regulations to govern.* The general provisions of these regulations will govern claims filed pursuant to the provisions of sections 36.09 to 36.23 insofar as applicable. (R. S. 161; 5 U. S. C. 22) [AR 35-7020, Dec. 1, 1938]

Sec. 36.06 *Action to be taken by claimant—(a) Proper claimant.* Claim must be presented by the owner of the property damaged, or by the subrogee of the rights of said owner, or by the duly authorized agent of either.

(b) *Form in which claim should be submitted.* The claimant will be required to submit a sworn statement over his signature and address setting forth all the facts and circumstances in connection with the damage claimed, including the nature and extent, the date incurred, the agency by which caused, if known, and the amount of the claim. Standard Form No. 28 (Claim for Damages—Accident, Motor Transportation) may be used whenever practicable.

(c) *Evidence to be submitted in support of claims.* Claims for damages to or loss of private property must be specific and substantiated by evidence of the damage or loss. A mere statement to the effect that such property was damaged or lost and that a certain amount is a fair reimbursement is not sufficient evidence to support a claim.

(1) The claimant will be required to submit in support of claims for damage to fences, buildings, motor vehicles, and similar property which has been repaired or replaced an itemized bill for repairs or replacements certified to as correct by the repairman or other proper person, or, if paid, an itemized receipt evidencing payment; if not repaired or replaced, a signed itemized estimate or estimates of the cost thereof.

(2) In support of claims for damage to crops, trees, land, or similar property the claimant will be required to submit an itemized signed estimate or estimates of the cost of repairs or restoration, supported by evidence of the number of acres of land or of crops or trees alleged to have been damaged, the normal yield per acre, and the market value of the property per unit of measure common to the property damaged, or the estimated length of time the land will be unfit for grazing and the normal rental value per acre for similar land in the vicinity.

(d) *Claims for use or occupancy of land.* Claims for damage to land or crops will not include a charge for the use or occupancy of the land by the Army, which is a question of payment to be made under the contract of lease of occupancy.

(e) *Signatures.* (1) All papers requiring the signature of the claimant must

be signed by the claimant or his duly authorized agent, and the signature of such claimant or agent must be identical throughout the papers.

(2) The title of the person signing the papers, if other than the owner of the property, or if an agent of a corporation, must be shown on all the papers signed by him. (R. S. 161; 5 U. S. C. 22) [AR 35-7020, Dec. 1, 1938]

**SEC. 36.06a Procedure upon receipt of claim—**(a) *To whom submitted.* The claim will be submitted to the commanding officer of the troops in those cases arising as a result of special field exercises; in other cases to the commanding officer of the post, camp, station, or other military establishment within which or nearest adjacent to which occurred the events giving rise to the claim. If upon preliminary examination it is found by the commanding officer that the claim does not pertain to his activity, it will be transmitted by him to the proper official.

(b) *Action of commanding officer.* After an administrative examination to determine whether or not the claimant has supplied the necessary information, the commanding officer will refer the claim to a board of one or more officers, or, in the case of a claim not requiring such action, will forward it through channels to the Chief of Finance. (R. S. 161; 5 U. S. C. 22) [AR 35-7020, Dec. 1, 1938]

**SEC. 36.07 Action to be taken by board of officers—**(a) *Function of board of officers.* The function of the board of officers is to investigate thoroughly and impartially the incident or incidents which caused the loss or damage for which reimbursement is being claimed, securing all pertinent evidence of the facts concerning each incident. In all claims of the classes covered by these regulations, the board of officers will—

(1) Consider the report, if any, of the officer or board of officers which investigated the accident or happening, together with the evidence attached thereto.

(2) Secure and consider, if practicable, as an aid in its investigation, evidence secured in connection with the report of survey where Government property has been damaged as the result of the same happening and a report of survey has been initiated.

(3) Conduct an independent investigation of the case.

(4) Secure all available evidence on behalf of both the Government and the claimant and, when practicable, under oath and by oral testimony rather than by deposition or ex parte statement.

(5) If practicable, permit claimant, or any person authorized to represent him, to cross examine the Government witnesses, or to see the testimony and evidence in the case and to present evidence in rebuttal thereof if necessary and claimant so requests.

(6) Make every effort to clear up disputed points with a view to establish-

ing definitely all the pertinent facts involved.

(7) Prepare and submit, in cases admitting of such treatment, diagrams which will contain pertinent measurements regarding the location of vehicles involved and of buildings or obstructions and various features of the surrounding territory having a bearing on the case.

(8) In cases involving damage to crops or land, if practicable, obtain testimony, or, if this is not practicable, sworn statements, including itemized estimates of the damage, from two or more qualified disinterested witnesses, if possible, and preferably of local, State, or Federal agricultural agents when available.

(b) *Testimony to be reduced to writing.* All testimony heard by the board will be reduced to writing and a transcript thereof certified as correct by the senior member of the board, and signed copies of all sworn statements or other evidence obtained by the board will be incorporated in the report of the proceedings.

(c) *Procedure to be followed to ascertain the amount of claim.* In arriving at the money value involved in the loss or damage, the following principles will govern:

(1) The cost (or estimated cost) of restoring the property to the condition in which it existed before the loss or damage occurred will serve as a basis.

(2) In no case will an allowance be made for repairs exceeding a reasonable value of the property immediately before the accident. In case of an automobile accident, the data called for in findings No. 11, as shown on War Department Form No. 30, will be considered in determining a reasonable value of the damaged vehicle.

(3) Deductions will be made—

(i) For any improvements made in the restoration of the property.

(ii) For any salvage value and insurance collections which were or should have been realized.

(4) The permanency of any parts which must be replaced in restoring the damaged property will be considered. Thus, an automobile tire is not expected to last through the life of a vehicle and, when a tire three-fourths wornout is so damaged as to require replacement with a new tire, three-fourths of the value of the new tire should be deducted. Similarly, the degree of wear to which the parts of a vehicle normally requiring frequent replacement have been subjected will be considered, and deductions made therefor where replacement with new parts is necessary. On the other hand, when it is necessary to replace parts (such as fenders or radiators) which normally would last throughout the life of a vehicle, no deductions will be made on account of the degree of wear to which the original parts have been subjected.

(5) Claimants are not entitled to recover cost incurred in preparation of proof of their claims, interest thereon, for inconvenience, or similar costs.

(6) Towing charges are allowable items of damage.

(7) Claimants may recover for the deprivation of use of damaged or lost property, in cases where the party deprived of use has sustained legally provable damages on that account.

(8) Items of State sales tax are properly included in awards made in cases falling within the provisions of the acts cited in these regulations as being proper and necessary in order to compensate the claimant fully for the damages sustained.

(d) *Acceptance of award and advice to claimant.* The board of officers will not advise the claimant as to the action taken on his claim unless and until an award thereon is recommended, in which event the claimant will be advised that such recommendation for award is subject to approval or disapproval by higher authority, and a statement in writing will be obtained from him as to whether or not he will accept the award, if finally approved by competent authority, in full satisfaction of his claim, and if not, as to his reasons for not accepting. In no case will the board of officers advise the claimant that his claim has been disallowed. See section 36.08. (R. S. 161; 5 U. S. C. 22) [AR 35-7020, Dec. 1, 1938]

**SEC. 36.07a Claims, the settlement of which is not provided for by any specific law.** Claims may arise which on account of statutory limitations, or for other reasons, do not come within the provisions of any law governing settlement and payment. All such claims will be referred to a board of officers for investigation and report in a manner similar to that prescribed in section 36.07 with such modification as the features of the particular case may warrant. Such claims will then be forwarded through The Adjutant General to the Chief of Finance for examination, administrative action, and submission to the Secretary of War. (R. S. 161; 5 U. S. C. 22) [AR 35-7020, Dec. 1, 1938]

**SEC. 36.07b Notification to claimant.** Upon receipt of notification by the Chief of Finance of the action taken by the Secretary of War on any claim falling under the provisions of sections 36.09 to 36.11, 36.14 to 36.14b, and 36.18 to 36.23, the Chief of Finance will notify the claimant of that action, transmitting one copy of notification to The Adjutant General, and one copy to the commanding officer of the troops engaged in the case of field exercise claims, or in other cases to the corps area commander under whose jurisdiction the claim arose. The Chief of Finance will forward to the commanding officer of the troops engaged in field exercises giving rise to a claim one copy of the voucher upon which the approved claim

was paid. (R. S. 161; 5 U. S. C. 22) [AR 35-7020, Dec. 1, 1938]

**Sec. 36.08 Miscellaneous provisions—**

(a) *Transfers and assignments of claims.* All transfers and assignments of any claim upon the United States, or any power of attorney, order, or other authority for receiving payment of any claim, are, under section 3477, Revised Statutes, null and void, unless made after the issue of a warrant for the payment of the claim. An assignment of a claim by operation of law, as when a receiver is appointed for an individual, firm, or corporation, or an administrator for the estate of a deceased person, etc., is an exception not covered by that statute. The legal designation by an incorporated or unincorporated company of an officer or agent to receive and receipt in its name for all moneys due it is not an assignment of a claim, but merely the proper method of covering payment to the company. The attempt by a partnership or individual to authorize other parties or persons to receive or receipt in its name for moneys due is an assignment covered by the statute. To recapitulate briefly, the law contemplates that claims due from the United States shall be paid only to the person to whom the money is due, except in case of assignments by operation of law. See R. S. 3477; 31 U. S. C. 203.

(b) *Furnishing information which can be made basis of claim—*(1) *General.* No information will be furnished by any person in the military service which can be made the basis of a claim against the Government, except it be given as the regulations prescribe to the proper officer of the War or Treasury Departments, the Department of Justice, the Veterans' Administration, or the General Accounting Office.

(2) *Official papers.* In view of the statute which prohibits officers from aiding or assisting in the prosecution or support of any claim against the Government (sec. 109, Criminal Code) official papers will not be furnished to attorneys or other persons to be used to support claims against the United States. See Ops. J. A. O. Jan. 12, 1917.

(3) *In connection with death, claims for pensions, etc.* The fact of the death of a person in the military service may be communicated to relatives, but not circumstances connected therewith which could be made use of in prosecuting claims against the Government.

(4) *Soliciting of pension or other claims at posts, etc.* The soliciting of pension or other claims against the United States on military reservations or at military posts, camps, or stations, including general hospitals, is prohibited. Civilian employees who give information with a view of aiding persons in soliciting such claims will be discharged.

(5) *Furnishing of certificate or affidavit upon request.* If any person in

the military service has knowledge of facts pertaining to the service of an individual who is an applicant for a pension, or for compensation under the war risk insurance act, he may, upon request, if not peculiarly interested, furnish a certificate or affidavit setting forth his knowledge, but such certificate or affidavit will be furnished only to The Adjutant General to be forwarded to the proper officers of the Veterans' Administration. Except in the case of enlisted men on discharge, record evidence will be furnished by the War Department only.

(6) *Proofs of disability or death in insurance claims.* Members of the military service who have knowledge of the facts as to the disability or death of any person may execute the proofs of such disability or death in a claim covered by an insurance policy (other than a war risk insurance certificate). Applications for copies of or access to the clinical or additional medical records will be referred to the War Department. (R. S. 161; 5 U. S. C. 22) [AR 35-7020, Dec. 1, 1938]

**Damages to or Loss of Private Property Incident to the Training, Practice, Operation, or Maintenance of the Army, General**

**Sec. 36.09 Limitations of application—**(a) *Claims involving negligence.* Claims involving negligence on the part of Government personnel under the jurisdiction of the War Department will not be considered as falling within the provisions of the act of May 15, 1936 (49 Stat. 1284; 31 U. S. C. 223) but will be considered as falling within the provisions of sections 36.14 to 36.14b or 36.15 to 36.17 as applicable.

(b) *Claims incident to special field exercises.* Claims arising as the result of the special field exercises of the Army will not be considered as falling within the provisions of the act cited in paragraph (a) above but will be considered as falling within the provisions of sections 36.18 to 36.20. (49 Stat. 1284; 31 U. S. C. 223 and subsequent annual appropriation acts) [AR 35-7040, Dec. 1, 1938]

**Sec. 36.10 Procedure of sections 36.02 to 36.08 applicable.** Insofar as applicable, the procedure set forth in sections 36.02 to 36.08 will be adopted as to claims arising under the provisions of the act cited in section 36.09. (49 Stat. 1284; 31 U. S. C. 223 and subsequent annual appropriation acts) [AR 35-7040, Dec. 1, 1938]

**Sec. 36.11 Conditions precedent to payment.** In order to authorize settlement of claims for damages from the appropriation cited in paragraph (a), section 36.09 and subsequent similar appropriations, each of the following conditions must be met:

(a) The damages must be ascertained by the War Department.

(b) The claim must not exceed the statutory amount of \$500.

(c) The cause of the happening must not involve negligence on the part of anyone.

(d) The award must be approved and its payment recommended by the Secretary of War.

(e) The owner of the property must signify his willingness to accept the amount so awarded and approved in full satisfaction of his claim. (49 Stat. 1284; 31 U. S. C. 223 and subsequent annual appropriation acts) [AR 35-7040, Dec. 1, 1938]

**Reimbursement for Damage to or Loss of Private Property Caused by the Negligence of Any Officer or Employee of the Government Acting Within the Scope of His Employment**

**Sec. 36.14 General procedure.** Insofar as applicable, the procedure set forth in sections 36.02 to 36.08 will be adopted as to claims arising under the provisions of sections 1 to 4 of the act of December 28, 1922 (42 Stat. 1066; 31 U. S. C. 215-217). (Secs. 1-4, 42 Stat. 1066; 31 U. S. C. 215-217) [AR 35-7070, Dec. 1, 1938]

**Sec. 36.14a Claims of subrogees.** (a) A claim presented by a claimant who has become subrogated to the rights of the owner of the damaged property may properly be certified to Congress under the act of December 28, 1922 (42 Stat. 1066; 31 U. S. C. 215-217) for an appropriation to provide for its payment. In making the certification, special attention will be called to the fact that it is a subrogated claim. See 36 Ops. Atty. Gen. 553; Op. J. A. G. No. 60, Claims and Bonds 537.5 July 21, 1932.

(b) (1) Claims of subrogees for a part of the total amount of the damage will be considered, if practicable, by the same board of officers that considers the claim of the owner of the property.

(2) The claim of a subrogee, whether acted on prior to, concurrent with, or after the claim of the legal owner of the property or as the sole claim in the matter, will be accompanied by a sworn statement of the legal owner of the property setting forth the amount of money that has been paid to him or on his account by the subrogee for the damage done to his property, the terms of the contract or agreement by virtue of which the relation of subrogee arose, that the amount for which the subrogee is liable has been paid and the date upon which such payment was made, or, if such evidence of payment cannot be obtained, the canceled check covering the payment made by the subrogee or a duly authenticated photostatic copy thereof. (Secs. 1-4, 42 Stat. 1066; 31 U. S. C. 215-217) [AR 35-7070, Dec. 1, 1938]

**Sec. 36.14b Conditions precedent to payment.** In order to authorize the settlement of claims for damages arising as a result of the activities under the jurisdiction of the War Department,



under the act cited in section 36.14, the following conditions must be met:

(a) The proximate cause of the happening which gave rise to the claim must have been the negligence of an officer or employee of the Government acting within the scope of his employment.

(b) The accident must not have been caused in whole or in part by any negligence on the part of the claimant or his agent or employee acting within the scope of his employment for the reason that the claim is barred where the facts show such contributory negligence.

(c) The damages must be ascertained by the War Department.

(d) The claim must have been presented to a representative of the War Department within 1 year from the date of the accrual of said claim.

(e) The claim may be only for damage to privately owned property (includes property belonging to a State or one of its subdivisions not originally purchased from United States Government funds).

(f) The claimant must be the legal owner of the property or a subrogee of the rights of the legal owner.

(g) The claim must not exceed the statutory amount of \$1,000.

(h) The award must be approved by the Secretary of War.

(i) The claimant must signify his willingness to accept the amount so awarded and approved in full satisfaction of his claim. (Secs. 1-4, 42 Stat. 1066; 31 U. S. C. 215-217) [AR 35-7070, Dec. 1, 1938]

**Damages to or Loss of Private Property Resulting From the Conduct of Special Field Exercises**

SEC. 36.18 *Scope of application.* (a) The provisions of the act of May 15, 1936 (49 Stat. 1281) and subsequent annual appropriation acts, include claims arising as a result of the operations of the various components of the Army of the United States, including National Guard, while going to, engaged upon, or returning from special field exercises for which funds are specifically appropriated in the annual military appropriation act.

(b) Specifically the act includes—

(1) Claims for reimbursement for damages to or loss of private property caused by the negligence of any officer or employee of the Government or of the National Guard or of the Organized Reserves, acting within the scope of his employment and while engaged or participating in such special field exercises. To that extent the act is subject to the same interpretation and limitations put upon the similar provisions of law contained in the act of December 28, 1922 (42 Stat. 1066); 31 U. S. C. 215; see sections 36.14 to 36.14b.

(2) Claims arising without negligence but incident to the special field exer-

cises. To that extent it is subject to the same interpretation and limitation put upon the provisions in the current appropriation act for the settlement of claims arising under like circumstances incident to the training, practice, operation, or maintenance of the Army (see sections 36.09 to 36.11).

(3) Claims under contracts executed pursuant to the act itself and containing agreements in advance to pay for damages to crops or other private property, whether such damages arise through negligence or are deemed necessarily incident to the use of the property covered by the agreement. The act does not contemplate the settlement of purely ex contractu claims based upon a breach of contract as for instance, failure without legal cause to accept supplies for which contracted. (49 Stat. 1281 and subsequent annual appropriation acts) [AR 35-7030, Dec. 1, 1938]

SEC. 36.19 *Procedure of sections 36.02 to 36.08 applicable.* Insofar as applicable, the procedure set forth in sections 36.02 to 36.08 will be adopted as to claims arising under the provisions of the act cited in paragraph (a), section 36.18. The board of officers to investigate a claim will be appointed by the commanding officer of the troops involved, e. g., the commanding general of an army in cases of claims arising as the result of army maneuvers. (49 Stat. 1281 and subsequent annual appropriation acts) [AR 35-7030, Dec. 1, 1938]

SEC. 36.20 *Conditions precedent to payment.* In order to authorize payment of claims for damages from the appropriation cited in paragraph (a), section 36.18 and subsequent similar appropriations, each of the following conditions must be met;

(a) The damages must be ascertained by the War Department.

(b) The claim must not exceed the statutory amount of \$500.

(c) Each claim must be substantiated by a report of a board of officers appointed by the commanding officer of the troops engaged.

(d) The award must be approved by the Secretary of War.

(e) The claimant must signify his willingness to accept the amount so awarded and approved in full satisfaction of his claim. (49 Stat. 1281 and subsequent annual appropriation acts) [AR 35-7030, Dec. 1, 1938]

**Reimbursement for Damage to or Loss of Private Property Under the Act of August 24, 1912**

SEC. 36.21 *Limitations of application—*

(a) *Claims involving negligence.* Claims involving negligence on the part of Government personnel under the jurisdiction of the War Department will not be considered as falling within the provisions of the act of August 24, 1912 (37 Stat. 586; 5 U. S. C. 208) but will be considered as falling within the provisions of sec-

tions 36.14 to 36.14b or 36.15 to 36.17 as applicable.

(b) *Claims incident to special field exercises, or training, practice, operation, or maintenance of the Army.* (1) Claims not in excess of \$500 arising out of the special field exercises of the Army or out of the training, practice, operation, or maintenance of the Army will not be considered as falling within the provisions of the act cited in paragraph (a) above but will be considered as falling within the provisions of sections 36.18 to 36.20 or 36.09 to 36.11, respectively.

(2) Claims in excess of \$500 but not exceeding \$1,000 arising as the result of such field exercises or of such training, practice, operation, or maintenance of the Army will be considered as falling within the provisions of the act cited in paragraph (a) above. (37 Stat. 586; 5 U. S. C. 208) [AR 35-7050, Dec. 1, 1938]

SEC. 36.22 *Procedure of sections 36.02 to 36.08 applicable.* Insofar as applicable, the procedure set forth in sections 36.02 to 36.08 will be adopted as to claims arising under the provisions of the act cited in section 36.21. (37 Stat. 586; 5 U. S. C. 208) [AR 35-7050, Dec. 1, 1938]

SEC. 36.23 *Conditions precedent to payment.* In order to authorize the settlement of claims for damages under the provisions of the act cited in paragraph (a), section 36.21, each of the following conditions must be met:

(a) The damages must be ascertained by the War Department.

(b) The claim must not exceed the statutory amount of \$1,000.

(c) The claim must not be one the settlement of which is provided for by any other law.

(d) The cause of the happening must not involve negligence on the part of anyone.

(e) The award must be approved and its payment recommended by the Secretary of War.

(f) The claimant must signify his willingness to accept the amount so awarded and approved in full satisfaction of his claim. (37 Stat. 586; 5 U. S. C. 208) [AR 35-7050, Dec. 1, 1938]

[SEAL]

E. S. ADAMS,

Major General,

The Adjutant General.

[F. R. Doc. 39-156; Filed, January 13, 1939; 10:15 a.m.]

**TITLE 16—COMMERCIAL PRACTICES  
FEDERAL TRADE COMMISSION**

*United States of America—Before  
Federal Trade Commission.*

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 11th day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[File No. 21-332]

IN THE MATTER OF TRADE PRACTICE RULES  
FOR THE PAINT AND VARNISH BRUSH  
MANUFACTURING INDUSTRY

PROMULGATION

Due proceedings having been held<sup>1</sup> under the trade practice conference procedure in pursuance of the Act of Congress approved September 26, 1914, as amended (Federal Trade Commission Act), and other provisions of law administered by the Commission;

It is now ordered, That the trade practice rules of Group I and Group II, as hereinafter set forth, which have been approved and received, respectively, by the Commission in this proceeding, be promulgated as of January 14, 1939.

*Statement by the Commission*

Trade practice rules for the Paint and Varnish Brush Manufacturing Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The products of the industry to which the rules relate consist of the various types and kinds of brushes used in painting and decorating, not only for the application of paint, varnish, lacquer and calcimine, but also for other purposes and uses in applying decorative or protective materials. The total capital investment for the manufacture of such brushes is said to be approximately \$10,000,000, and the value of annual sales about \$15,000,000.

In the course of the proceedings an industry's conference was held in Atlantic City, New Jersey, under the Commission's auspices, and proposed trade practice rules were submitted by members of the industry. Subsequently, tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available, upon public notice, to all interested and affected parties, affording them opportunity to present their views, suggestions or objections, if any, and to be heard in respect to such rules. Accordingly, hearing was held in Washington, and all matters submitted orally and in writing were received and given due consideration.

Thereafter, and upon consideration of the entire matter, final action was taken and the rules in the form appearing herein under Group I and Group II were respectively approved and received by the Commission.

These rules promulgated by the Commission are designed to foster and promote fair competitive conditions in the interest of the industry and the public. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

*Group I*

The unfair trade practices which are embraced in these Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited, within the purview of the Federal Government, by acts of Congress, as construed in the decisions of the Federal Trade Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation or other organization, of such unlawful practices in or directly affecting interstate commerce.

**Definitions.**—The term "products of the industry" and the word "brushes" as used in these rules embrace all types of brushes manufactured in the industry for use in applying paint, varnish, lacquer, calcimine or other similar decorative or protective materials.

The term "bristle" as used in these rules is not to be construed as including any hair, fiber or material other than the bristle of swine.

**RULE 1. Misrepresentation of industry products.**—It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture or distribution of any products of the industry or concerning any component of such products, or in any other material respect.

**RULE 2. Misbranding of industry products.**—(a) The marking or branding of brushes with the words "All Bristle", "100% Bristle", "Pure Bristle", or "All Pure Bristle", or with word, term or representation of similar import or meaning when such brushes are in fact composed in whole or in part of material or materials other than bristle, or the use of the word "bristle" in any manner having the tendency and capacity or effect of misleading or deceiving the purchasing or consuming public with respect to the bristle content of such brushes, is an unfair trade practice.

(b) The deceptive marking or branding of brushes with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture or distribution thereof, or in any other material respect, is an unfair trade practice.

**RULE 3. Disclosure of composition.**—It is an unfair trade practice to sell, offer for sale, or distribute any brush the brushing part of which is composed, in whole or in part, of any material which by reason of its natural appearance or as a result of special processing simulates bristle, without clear and non-deceptive disclosure of the true composition thereof, where failure to so disclose the same has the tendency and

capacity or effect of misleading or deceiving the purchasing or consuming public.

(a) Such disclosure should be made by branding, stamping, or otherwise marking the handle or ferrule of the brush with the name of each of the constituent materials of the brushing part thereof in the order of its predominance.

(Illustration.—A brush composed of 60% horsehair and 40% bristle should be marked "Horsehair and Bristle" or "60% Horsehair and 40% Bristle".)

Provided, however,

(1) that the name of any such constituent material shall not be set forth in type or manner so inconspicuous, remotely placed, or disproportionately minimized as thereby to have the tendency, capacity or effect of misleading or deceiving the purchasing or consuming public in respect to the proportion of such material contained therein, or in any other respect, and

(2) when bristle as a material is not contained therein in a substantial quantity, the percentage in which such material is present should be specifically stated, to the end that purchasers may not be misled or deceived into the belief that this material is present in greater proportion than is in fact true.

(Illustration.—A brush composed of 90% horsehair and 10% bristle should be marked "Horsehair and 10% Bristle" or "90% Horsehair and 10% Bristle".)

**RULE 4. False invoicing.**—Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

**RULE 5. Inducing breach of contract.**—Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring or prejudicing competitors in their businesses, is an unfair trade practice.

**RULE 6. Substitution of products.**—The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions and with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

**RULE 7. Commercial bribery.**—It is an unfair trade practice for a member of

<sup>1</sup> 3 F. R. 1831 DL

the industry directly or indirectly to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees or representatives of customers or prospective customers, or to agents, employees or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

**RULE 8. Imitation of Trade-Marks, etc.**—The imitation or simulation of the trade-marks, trade names, labels or brands of competitors, with the purpose or with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

**RULE 9. Use of the word "Free."**—The use of the word "free" where not properly or fairly qualified when the article is in fact not free, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

**RULE 10. Consignment shipping.**—It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however,* That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution, in such manner as thereby to suppress competition or restrain trade.

**RULE 11. Use of "Loss leaders."**—The practice of selling any product of the industry below the seller's cost as a "loss leader" to induce the purchase of any other product of the industry, the sale of the latter being used to recoup the loss sustained on the "loss leader" product so sold, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

**RULE 12. (a) Prohibited discriminatory prices, or rebates, refunds, discounts, credits, etc., which effect unlawful price discrimination.**—It is an unfair

trade practice for any member of the industry engaged in commerce,<sup>2</sup> in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,<sup>3</sup> where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,<sup>2</sup> and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,<sup>2</sup> or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce<sup>2</sup> from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited brokerage and commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,<sup>2</sup> in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase

of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited advertising or promotional allowances, etc.*—It is an unfair trade practice for any member of the industry engaged in commerce<sup>2</sup> to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such product or commodities.

(d) *Prohibited discriminatory services or facilities.*—It is an unfair trade practice for any member of the industry to engage in commerce<sup>2</sup> to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal price discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,<sup>2</sup> in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

**RULE 13. Discriminatory returns.**—It is an unfair trade practice for any member of the industry, engaged in commerce,<sup>2</sup> to discriminate in favor of one customer-purchaser against another customer-purchaser of brushes, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith, upon terms not accorded to all customer-purchasers on proportionally equal terms, the service or facility whereby such favored purchaser is accorded the privilege of returning brushes so purchased and receiving therefor credit or refund of purchase price; *provided, however,* nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund

<sup>1</sup> Paragraph (a) of Rule 12 shall not be construed as embracing practices prohibited by Paragraphs (b), (c), and (d) of this rule.

<sup>2</sup> As herein used, the word "commerce" means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided,* That this shall not apply to the Philippine Islands.



of purchase price, when and because such merchandise has been falsely or deceptively labeled, branded or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect contrary to warranty or purchase contract.

#### Group II

Compliance with the trade practice provisions embraced in these Group II rules is considered to be conducive to sound business methods and is to be encouraged and promoted individually or through voluntary cooperation exercised in accordance with existing law. Nonobservance of such rules does not, *per se*, constitute violation of law. Where, however, the practice of not complying with any such Group II rules is followed in such manner as to result in unfair methods of competition, or unfair or deceptive acts or practices, corrective proceedings may be instituted by the Commission as in the case of a violation of Group I rules.

**RULE A. Return of merchandise.**—The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without just cause, creates waste and loss, increases the cost of doing business to the detriment of both the industry and the public, and is condemned by the industry, subject, however, to requirements and limitations set forth in the provisions of Rule 13 of Group I, herein.

**RULE B. Repudiation of contracts.**—Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market, or by buyers on a declining market, is condemned by the industry.

**RULE C. Dissemination of credit information.**—The industry records its approval of distributing to its members information covering delinquent and slow accounts insofar as this may be lawfully done.

**RULE D. Filing of Trade-Marks, etc.**—To avoid confusion within the industry, it is recommended that each member thereof voluntarily file with some agency designated by the industry all trade-marks, trade names, labels or brands used by such member and that such information be made equally available to all members of the industry and to the public.

**RULE E. All-bristle brushes.**—The industry records its approval of the marking or branding of all brushes composed wholly of bristle with the words "All Bristle", "100% Bristle", "Pure Bristle" or "All Pure Bristle", or with word or words of similar import or meaning, on the handle or ferrule thereof, to the end that the purchasing and consuming public may be correctly in-

formed as to the content of such brushes.

Promulgated and issued by the Federal Trade Commission as of January 14, 1939.

[SEAL]

OTIS B. JOHNSON,  
Secretary.

[F. R. Doc. 39-163; Filed, January 13, 1939;  
11:54 a. m.]

## TITLE 23—HIGHWAYS

### BUREAU OF PUBLIC ROADS

PART 11—RULES AND REGULATIONS FOR CARRYING OUT THE PROVISIONS OF SECTION 2 OF THE ACT OF JUNE 8, 1938, AND ACTS AMENDATORY THERETO OR SUPPLEMENTARY THERETO, WHICH RELATE TO THE IMPROVEMENT OF SECONDARY OR FEEDER ROADS IN ACCORDANCE WITH THE PROVISIONS OF THE FEDERAL HIGHWAY ACT

Pursuant to the authority conferred upon the Secretary of Agriculture by the act of Congress approved November 9, 1921, entitled "An act to amend the act entitled 'An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes,' approved July 11, 1916, as amended and supplemented, and for other purposes" (42 Stat. 212), known and cited as the Federal Highway Act, I hereby prescribe and promulgate the attached rules and regulations for carrying out the provisions of section 2 of the act of June 8, 1938 (Public No. 584—75th Congress),<sup>1</sup> and acts amendatory thereof or supplementary thereto, which provide for the improvement of secondary or feeder roads, farm-to-market roads, rural-free-delivery mail roads, and public-school bus routes in accordance with the provisions of the Federal Highway Act, as amended and supplemented.

Done at the City of Washington this 13th day of January, 1939, as witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,  
Secretary of Agriculture.

**SECTION 11.1 Definitions.** For the purposes of these rules and regulations the following definitions shall control.

(a) "Act" shall mean section 2 of the Act of June 8, 1938 (52 Stat. 633), and acts amendatory thereof or supplementary thereto, which provide for the improvement of secondary or feeder roads, including farm-to-market roads, rural-free-delivery mail roads, and public-school bus routes in accordance with the provisions of the Federal Highway Act, as amended and supplemented.

<sup>1</sup> 52 Stat. 633.

(b) "State" as used herein shall include the Territory of Hawaii, the Island of Puerto Rico and the District of Columbia.

(c) "Secretary" shall mean the Secretary of Agriculture of the United States.

(d) "Secondary highway funds" shall mean the funds authorized to be apportioned under the act among the several States by the Secretary of Agriculture for the improvement of secondary or feeder roads.

(e) "Secondary or feeder roads" shall mean roads outside of municipalities, except as hereafter provided, which are not included in the Federal-aid highway system, and shall include farm-to-market roads, mine-to-market roads, rural-free-delivery mail roads, public-school bus routes, and other rural roads of community value which connect with important highways or which extend reasonably adequate highway service from such highways, or which lead to rail or water shipping points or local settlements. The limitation with respect to roads within municipalities shall not apply to the District of Columbia and shall not be construed to prevent improvements into or through small municipalities when such improvements are necessary for continuity of service.

(f) "Municipality" shall mean a populous community, generally of defined area, usually organized pursuant to law into a body politic with corporate name and continuous succession and for the purpose and with the authority of subordinate local self-government.

(g) "Project" shall mean a definite undertaking for a purpose defined under the act.

(h) Projects shall be designated "Federal Aid Secondary Project No. FAS—".\*

**Sec. 11.2 Initiation of projects.** All projects under this act shall be initiated by the States and submitted in the same manner as other Federal-aid projects, and all such projects shall be subject to all of the provisions of the rules and regulations of the Secretary of Agriculture in effect for administering the Federal Highway Act, as amended, except such provisions as are inconsistent or in conflict with these rules and regulations.\*

**Sec. 11.3 Application of funds to projects.** (a) The funds apportioned to any State under the act shall be applied to projects, essentially rural in character, that are not on highway routes which are potential additions to the Federal-aid highway system within a reasonable interval.

(b) To accomplish a wide distribution of benefits within each State in the expenditure of funds authorized by the act without a sacrifice of administrative or construction efficiency, the Chief of

\*Secs. 11.1 to 11.8, inclusive, issued under the authority contained in Sec. 18, 42 Stat. 216; 23 U. S. C. 19.

the Bureau of Public Roads shall determine the minimum percentage of counties, applicable alike in each State, in which the funds authorized for any one or more fiscal years shall be used: Provided, That the cost chargeable to secondary highway funds of projects programmed for construction in a State in any one fiscal year shall not exceed the amount of such funds available to the State.

(c) No projects shall be undertaken which do not provide for a surfacing or stabilization of the roadbed which shall be reasonably satisfactory for the traffic served. Grading and drainage as first stage construction may be accepted: Provided, The State highway department will enter into a satisfactory agreement for future surfacing or stabilization of the roadbed.\*

**SEC. 11.4 Selection of projects.** (a) Each State highway department shall undertake the selection and designation of an initial system or group of secondary or feeder roads for construction or reconstruction based upon their relative importance as determined from factual data secured from State-wide studies for the planning of a complete highway system, and submit a suitable description and map of such proposed system or group to the Bureau of Public Roads for approval: Provided, That prior to the selection, designation, and approval of such system or group of secondary or feeder roads, projects may be approved for construction if it is reasonably anticipated that such projects will become a part of such system or group: And provided further, That prior to the selection, designation and approval of such system or group of secondary or feeder roads, the Chief of Bureau of Public Roads shall determine to what extent secondary or feeder road projects may be located on the State highway system.

(b) The mileage of the initial system or group of secondary or feeder roads in any State shall not exceed 10 percent of the highway mileage of the State as shown by the latest available records of the State highway department. The initial system or group of secondary or feeder roads may be selected, designated, and approved, in whole or in part, in any State and may be modified, or increased, from time to time, as justified by the progress of its improvement.

(c) After a secondary or feeder system or group of highways has been selected, designated and approved in any State no project shall be approved which is not a part of a route embraced in such system or group.\*

**SEC. 11.5 Surveys, plans, specifications, etc.** Surveys and plans, specifications, and estimates for all projects in each State shall correspond to the character of the work contemplated and shall be in sufficient detail to show the quantity and kind of work involved and shall

be prepared under the immediate direction of the State highway department without reimbursement from Federal funds. The State highway department, however, may utilize the services of well qualified county engineering organizations, acting under its direction, for the surveys, preparation of plans, specifications, and estimates, and for the supervision of construction for any project. Inasmuch as the Federal Highway Act requires each State to maintain at its own expense a State highway department having adequate powers and suitably equipped and organized to discharge the duties required by the legislation, no part of the cost of maintaining a central office organization of the State highway department or of any organization which may be utilized by the State for construction engineering and inspection shall be paid with Federal funds. Construction engineering and inspection charges reimbursable with Federal funds shall be limited to the salaries of individuals directly employed on a project and to other necessary costs incurred in connection with such engineering and inspection.\*

**SEC. 11.6 Methods of undertaking work.** Whenever feasible and practicable the contract method shall be followed in performing work.\*

**SEC. 11.7 Highway planning projects.** With the approval of the Secretary, not to exceed 1½ per centum of the amount apportioned to any State for secondary or feeder roads may be used for surveys, plans, engineering and economic investigations of projects for future construction in such State, or for the planning of a complete highway system and future programs of highway improvement for such State. Such proposed surveys, plans, and engineering investigations shall be initiated by the State highway department in the same manner as are other projects by the submission of a project statement and, if approved by the Secretary, the work may be prosecuted under a project agreement.\*

**SEC. 11.8 Maintenance.** Project agreements for secondary or feeder road projects shall provide for the maintenance of such projects by the State to the extent permitted by State law; otherwise, the State shall submit, in the form prescribed by the Secretary, an agreement for such maintenance with the county or other political subdivision responsible therefor: *Provided, however,* No project contemplating maintenance by a county or other political subdivision shall be approved if any road previously improved with Federal funds under the provisions of the Federal Highway Act, as amended and supplemented, which the said county or other political subdivision has agreed to maintain, is not being satisfactorily maintained as determined by the Chief of the Bureau of Public Roads.\*

[F. R. Doc. 39-164; Filed, January 13, 1939; 12:25 p. m.]

## TITLE 26—INTERNAL REVENUE BUREAU OF INTERNAL REVENUE

[T. D. 4881]

### FORM 774, TOBACCO INVOICE OR NOTICE OF SHIPMENT, BY DEALERS IN LEAF TOBACCO

REGULATIONS NO. 8, RELATING TO THE TAXES ON TOBACCO, SNUFF, CIGARS, AND CIGARETTES, ALSO ON CIGARETTE PAPERS AND TUBES AND PURCHASE AND SALE OF LEAF TOBACCO, AMENDED

*To Collectors of Internal Revenue and Others Concerned:*

The first paragraph of subdivision (4) (a) of article 24 of Regulations No. 8, as revised and approved November 12, 1934, is amended to read as follows:

(a) *Exports.*—In the case of exports, the dealer shall show on both the original (white) and duplicate (yellow) Form 774 under appropriate heading, the type number of the tobacco to be exported according to the official classification of leaf tobacco by the United States Department of Agriculture, Bulletin S. R. A.—B. A. E. No. 118, issued November, 1929.

The original (white) Form 774 shall be attached to a copy of "Shipper's Export Declaration" on Customs or Commerce Form 7525. This copy shall be marked, "For internal revenue purposes," and with original (white) invoices on Form 774 attached shall be forwarded at the close of each month by the collector of customs, at the port of exportation, to the Commissioner of Internal Revenue, Tobacco Division, Washington, D. C.

This Treasury Decision is promulgated under the authority contained in section 1101 of the Revenue Act of 1926.

[SEAL] MILTON E. CARTER,  
*Acting Commissioner of  
Internal Revenue.*

Approved: January 11, 1939.

JOHN W. HANES,  
*Acting Secretary of the Treasury.*

[F. R. Doc. 39-161; Filed, January 13, 1939; 11:09 a. m.]

## TITLE 30—MINERAL RESOURCES NATIONAL BITUMINOUS COAL COMMISSION

[Docket No. 321-FD]

ORDER IN THE MATTER OF A PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE TO ENABLE THE COMMISSION TO DETERMINE WHETHER CERTAIN COALS IN THE STATE OF MONTANA ARE SUBJECT TO THE PROVISIONS OF THE NATIONAL BITUMINOUS COAL ACT OF 1937, AND FOR THE FURTHER PURPOSE OF HEARING APPLICATIONS FOR EXEMPTION PROVIDED BY ORDER No. 28

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C. on the 11th day of January 1939.

*It appearing*, That on the 22nd day of March, 1938, the Commission entered its Order No. 237<sup>1</sup> providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock A. M., for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937,<sup>2</sup> and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28.<sup>3</sup> The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237, and

*It further appearing*, That due and proper notice of said hearing was given to all interested parties and the cause came on to be heard pursuant to Order No. 237, and the evidence being adduced and being submitted to the examiner, the examiner filed his report of the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in compliance with the Rules of Practice and Procedure of the Commission. The examiner filed separate reports with respect to the applications for certificates of exemption filed pursuant to Order No. 28, which were heard by the examiner in conjunction with the hearing in this matter and which has been treated separately by the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said reports have been filed with the Commission; and

The Commission, being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that the proposed findings of fact and conclusions submitted by the examiner relating to the underlying coal in the counties in Montana hereinbelow set forth are in all respects true and correct, and the same are hereby adopted as the findings of fact and conclusions of the Commission;

*Now, therefore*, It is by order determined:

(1) The underlying coal in the thirty-seven (37) counties of Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Cascade, Chouteau, Deer Lodge, Fergus, Flathead, Gallatin, Glacier, Golden Valley, Granite, Hill, Judith Basin, Jefferson, Lewis and Clark, Liberty, Madison, Meagher, Missoula, Musselshell, Park, Petroleum, Powell, Phillips, Pondera, Ravalli, Rosebud, Silver Bow, Stillwater, Teton, Toole, Treasure, Wheatland, and Yellowstone is coal within the meaning of the Bituminous Coal Act of 1937, and

is therefore subject to the provisions of said Act.

(2) The underlying coal in the eight (8) counties of Daniels, Dawson, Fallon, Richland, Roosevelt, Sheridan, Valley and Wibaux in the State of Montana is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937, and is therefore exempted from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, and to all known producers of coal, lignite or otherwise, in Montana, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 11th day of January 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-179; Filed, January 13, 1939;  
12:35 p.m.]

## Notices

### DEPARTMENT OF THE INTERIOR.

#### National Bituminous Coal Commission.

[Docket No. 321-FD]

#### ORDER IN THE MATTER OF THE APPLICATION OF HERMAN ANDERSON FOR A CERTIFICATE OF EXEMPTION PURSUANT TO ORDER NO. 28 OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January 1939.

*It appearing*, That on the 22nd day of March, 1938, the Commission entered its Order No. 237<sup>1</sup> providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock A. M., for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that Herman Anderson, operating a coal mine at SE¼ of Section 10, Township 35, Range 58, Sheridan County, in the State of Montana, filed application for certificate of exemption pursuant to Order No. 28,<sup>2</sup> alleging that the coals produced by him are not subject to the provisions of the said Act. The Commission assigned the cause to an examiner of the Commission

for a hearing at the time and place designated by said Order No. 237; and

*It further appearing*, That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said report have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that the proposed finding of fact and the conclusion submitted by the examiner are, in all respects, true and correct, and the same are hereby adopted as the finding of fact and conclusion of the Commission;

*Now, therefore*, It is by order hereby certified:

That the coal produced at the mine operated by Herman Anderson, which mine is located in SE¼ of Section 10, Township 35, Range 58, Sheridan County, in the State of Montana, is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937 and therefore is exempt from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-165; Filed, January 13, 1939;  
12:31 p.m.]

[Docket No. 321-FD]

#### ORDER IN THE MATTER OF THE APPLICATION OF ANDREW OLSON FOR A CERTIFICATE OF EXEMPTION PURSUANT TO ORDER NO. 28 OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January 1939.

*It appearing*, That on the 22nd day of March, 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of

<sup>1</sup> 3 F. R. 725 DI.

<sup>2</sup> 50 Stat. 72.

<sup>3</sup> 2 F. R. 1325 (1581 DI).

<sup>1</sup> 3 F. R. 725 DI.

<sup>2</sup> 2 F. R. 1325 (1581 DI).

10:00 o'clock, a. m., for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that Andrew Olson, operating a coal mine in Section 31, Township 35, Range 55, near Plentywood, Sheridan County, Montana, filed application for certificate of exemption pursuant to Order No. 28, alleging that the coals produced by him are not subject to the provisions of the said Act. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237; and

*It further appearing,* That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said report have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that the proposed finding of fact and the conclusion submitted by the examiner, are, in all respects, true and correct, and the same are hereby adopted as the finding of fact and conclusion of the Commission;

*Now, therefore,* It is by order hereby certified:

That the coal produced at the mine operated by Andrew Olson, which mine is located in Section 31, Township 35, Range 55, near Plentywood, Sheridan County in the State of Montana, is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937, and therefore is exempt from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-166; Filed, January 13, 1939;  
12:31 p. m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF THE APPLICATION OF JAMES L. CURRAN, OWNER OF PEERLESS COAL MINE FOR A CERTIFICATE OF EXEMPTION PURSUANT TO ORDER NO. 28 OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January 1939.

*It appearing,* That on the 22nd day of March, 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock, a. m. for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that James L. Curran, of Lead, South Dakota, operating a coal mine known as the Peerless Coal Mine, Six miles west of Broadus, Powder River County, in the State of Montana, filed application for certificate of exemption pursuant to Order No. 28, alleging that the coals produced by him are not subject to the provisions of the said Act. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237; and

*It further appearing,* That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said report have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that the proposed findings of fact and the conclusion submitted by the examiner are, in all respects, true and correct, and the same are hereby adopted as the findings of fact and conclusion of the Commission;

*Now, therefore,* It is by order hereby certified:

That the coal produced at the Peerless Coal Mine of James L. Curran, which mine is located in the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 23, also SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 23, also NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 26 and NW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 26, Township 4 South, Range 50 East, Mon-

tana P. M., Six miles west of Broadus, Powder River County, in the State of Montana, is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937 and therefore is exempt from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-167; Filed, January 13, 1939;  
12:31 p. m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF THE APPLICATION OF ANDERSON AND LAGERQUIST FOR A CERTIFICATE OF EXEMPTION PURSUANT TO ORDER NO. 28 OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January 1939.

*It appearing,* That on the 22nd day of March, 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana; on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock A. M., for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that Anderson and Lagerquist, operating a coal mine in Section 4, Township 35, Range 58, in Sheridan County, Montana, filed application for certificate of exemption pursuant to Order No. 28, alleging that the coals produced by them are not subject to the provisions of the said Act. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237; and

*It further appearing,* That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and

no exceptions to the said report have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that the proposed finding of fact and the conclusion submitted by the examiner are, in all respects, true and correct, and the same are hereby adopted as the finding of fact and conclusion of the Commission;

Now, therefore, It is by order hereby certified:

That the coal produced at the mine operated by Anderson and Lagerquist, which mine is located in Section 4, Township 35, Range 58, in Sheridan County, in the State of Montana, is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937, and therefore is exempt from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated at Washington, D. C., this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-168; Filed, January 13, 1939;  
12:32 p. m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF THE APPLICATION  
OF GUY H. ROSS FOR A CERTIFICATE OF  
EXEMPTION PURSUANT TO ORDER NO. 28  
OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January 1939.

It appearing, at the hearing held April 25, 26 and 27, 1938, at Billings, Montana, for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28, the applicant requested that his application for exemption be dismissed because he had sold his lease prior to the hearing; and

It further appearing, That the Examiner has recommended that the application be dismissed in accordance with the request of the applicant:

Now, therefore, it is hereby ordered that the application of Guy H. Ross, Lambert, Montana, for a certificate of exemption be and the same is dismissed.

The Secretary of the Commission shall forthwith mail a copy of this order to

the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated at Washington, D. C. this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-169; Filed, January 13, 1939;  
12:32 p. m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF THE APPLICATION  
OF SAAVI STORAASLI FOR A CERTIFICATE OF  
EXEMPTION PURSUANT TO ORDER NO. 28  
OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January 1939.

It appearing, That on the 22nd day of March, 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock, a. m., for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that Saavi Storaasli, operating a coal mine at Plentywood, Sheridan County, in the State of Montana, filed application for certificate of exemption pursuant to Order No. 28, alleging that the coals produced by him are not subject to the provisions of the said Act. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237; and

It further appearing, That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said report have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing, as the same is contained in the official transcript of the testimony and documentary evidence filed herein, finds that the proposed finding of fact and the

conclusion submitted by the examiner are, in all respects, true and correct, and the same are hereby adopted as the finding of fact and conclusion of the Commission;

Now, therefore, it is by order hereby certified:

That the coal produced at the mine operated by Saavi Storaasli, which mine is located in Plentywood, Sheridan County, in the State of Montana, is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937, and, therefore, is exempt from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated at Washington, D. C., this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-170; Filed, January 13, 1939;  
12:33 p. m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF THE APPLICATION  
OF FAIRVIEW COAL COMPANY FOR A CERTIFICATE OF EXEMPTION PURSUANT TO  
ORDER NO. 28 OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January, 1939.

It appearing, That on the 22nd day of March, 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock a. m. for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that the Fairview Coal Company, located in Sections 6 and 7, Township 34, Range 60, Richland County, in the State of Montana, filed application for certificate of exemption pursuant to Order No. 28, alleging that the coals produced by it are not subject to the provisions of the said Act. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237; and

It further appearing, That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said



Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said report have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that the proposed finding of fact and the conclusion submitted by the examiner are, in all respects, true and correct, and the same are hereby adopted as the finding of fact and conclusion of the Commission;

Now, therefore, it is by order hereby certified:

That the coal produced at the mine operated by the Fairview Coal Company, which mine is located in Sections 6 and 7, Township 24, Range 60, Richland County, in the State of Montana, is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937, and therefore is exempt from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated at Washington, D. C., this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-171; Filed, January 13, 1939;  
12:33 p. m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF THE APPLICATION OF GRANT STONER FOR A CERTIFICATE OF EXEMPTION PURSUANT TO ORDER No. 28 OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its Offices in Washington, D. C., on the 11th day of January, 1939.

*It appearing*, That on the 22nd day of March, 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock a. m., for the purpose of receiving evidence to enable the Commission to determine whether certain

coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that Grant Stoner, operating a coal mine at Township 36 North, Sheridan County, in the State of Montana, filed application for certificate of exemption pursuant to Order No. 28, alleging that the coals produced by him are not subject to the provisions of the said Act. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237; and

*It further appearing*, That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said report have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that the proposed finding of fact and the conclusion submitted by the examiner are, in all respects, true and correct, and the same is hereby adopted as the finding of fact and conclusion of the Commission.

Now, therefore, it is by order hereby certified:

That the coal produced at the mine operated by Grant Stoner, which mine is located in Section 3, Township 36 North, Range 52 East, MPM, Sheridan County, in the State of Montana, is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937 and therefore is exempt from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated at Washington, D. C., this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-172; Filed, January 13, 1939;  
12:33 p. m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF THE APPLICATION OF OTTO A. PUST FOR A CERTIFICATE OF EXEMPTION PURSUANT TO ORDER No. 28 OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January 1939.

*It appearing*, That on the 22nd day of March, 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock, a. m., for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that Otto A. Pust, operating a coal mine in Section 33, Township 22, North of the Range 55, E. M. P. M., Richland County, in the State of Montana, filed application for certificate of exemption pursuant to Order No. 28, alleging that the coals produced by him are not subject to the provisions of the said Act. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237; and

*It further appearing*, That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said report have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that the proposed finding of fact and the conclusion submitted by the examiner are, in all respects, true and correct, and the same are hereby adopted as the finding of fact and conclusion of the Commission;

Now, therefore, it is by order hereby certified:

That the coal produced at the mine operated by Otto A. Pust, which mine is located in Section 33, Township 22, North of the Range 55, E. M. P. M., Richland County, in the State of Montana, is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937, and therefore is exempt from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated at Washington, D. C., this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-173; Filed, January 13, 1939;  
12:34 p. m.]

[Docket Nos. 589-FD, 547-FD, 521-FD,  
590-FD, 455-FD, 591-FD, 592-FD, 593-FD]

ORDER IN THE MATTER OF THE APPLICATIONS FOR EXEMPTION UNDER THE SECOND PARAGRAPH OF SECTION 4-A OF THE BITUMINOUS COAL ACT OF 1937: DAVID S. EVANS, WEST BLOCTON, ALABAMA; JAMES A. BIERCE, BAYFIELD, COLORADO; ANTONIO FRANZA, TRINIDAD, COLORADO; SOUTH CANON MINE LEASING COMPANY, GLENWOOD SPRINGS, COLORADO; MIDDLE RIVER COAL COMPANY, FULTON, MISSOURI; THARP COAL COMPANY, COLUMBIA, MISSOURI; CHERRY RUN COAL MINING COMPANY, SNOW SHOE, PENNSYLVANIA; MUTUAL COAL COMPANY, SALT LAKE CITY, UTAH

At a regular session of the National Bituminous Coal Commission held in its offices in Washington, D. C., on the 11th day of January 1939.

It appearing that the above-named applicants having heretofore filed with the Commission their respective applications for exemption from the provisions of Section 4 and the first paragraph of Section 4-A of the Bituminous Coal Act of 1937; and

It further appearing that the above-named applicants have filed with the Commission their respective withdrawals, without prejudice, of their applications for exemption;

Now, therefore, it is hereby ordered:

1. That the withdrawals of said applications for exemption from the provisions of Section 4 and the first paragraph of Section 4-A, filed by the above-named applicants, be and the same hereby are granted without prejudice to the rights of any of the above-named applicants to file at any future time an application for exemption pursuant to the provisions of Section 4-A, and without such withdrawals constituting a waiver of any exemption which might otherwise become effective during the pendency of a subsequent application; and

2. That the said applications for exemption are hereby deemed to be withdrawn.

3. The Secretary of the Commission is directed forthwith to mail a copy of

this Order to each of the applicants above-mentioned, or to their attorneys of record, to the Consumers' Counsel, to the Secretary of each District Board, to the Commissioner of Internal Revenue, and shall cause a copy hereof to be filed and made available for inspection at each of the Statistical Bureaus of the Commission.

By order of the Commission.

Dated this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-174; Filed, January 13, 1939;  
12:34 p. m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF THE APPLICATION OF ACME COAL MINE FOR A CERTIFICATE OF EXEMPTION PURSUANT TO ORDER NO. 28 OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January 1939.

It appearing, That on the 22nd day of March, 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock A. M., for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that the Acme Coal Mine, located in SE ¼ of Section 13, Township 34 North, Range 57 East Montana Principal Meridian, Sheridan County, in the State of Montana, filed application for certificate of exemption pursuant to Order No. 28, alleging that the coals produced by it are not subject to the provisions of the said Act. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237; and

It further appearing, That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said report have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing as the same is contained in the official

transcripts of the testimony and documentary evidence filed herein, finds that the proposed finding of fact and the conclusion submitted by the examiner are, in all respects, true and correct, and the same are hereby adopted as the finding of fact and conclusion of the Commission;

Now, therefore, it is by order hereby certified:

That the coal produced at the Acme Coal Mine, which mine is located in SE¼ of Section 13, Township 34 North, Range 57 East Montana Principal Meridian, Sheridan County, in the State of Montana, is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937, and, therefore, is exempt from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producer's Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated at Washington, D. C., this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-175; Filed, January 13, 1939;  
12:34 p. m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF THE APPLICATION OF ELIZABETH A. ROBINSON FOR A CERTIFICATE OF EXEMPTION PURSUANT TO ORDER NO. 28 OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January 1939.

It appearing, That on the 22nd day of March, 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock A. M., for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that Elizabeth A. Robinson, operating a coal mine located in Township 36, Valley County, in the State of Montana, filed application for certificate of exemption pursuant to Order No. 28, alleging that the coals produced by her are not subject to the provisions of the said Act. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237; and

*It further appearing*, That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said report have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that the proposed finding of fact and the conclusion submitted by the examiner are, in all respects, true and correct, and the same are hereby adopted as the finding of fact and conclusion of the Commission;

*Now, therefore*, it is by order hereby certified:

That the coal produced at the mine operated by Elizabeth A. Robinson, which mine is located in Section 15, Township 36, Range 42 E. M. P. M., Valley County, in the State of Montana, is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937, and, therefore, is exempt from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated at Washington, D. C., this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-176; Filed, January 13, 1939;  
12:35 p.m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF THE APPLICATION OF EMIL SKOGLUND FOR A CERTIFICATE OF EXEMPTION PURSUANT TO ORDER NO. 28 OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January 1939.

*It appearing*, That on the 22nd day of March 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock, a. m., for the purpose of

receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that Emil Skoglund, operating a coal mine about five miles east of Richland, Daniels County, Montana, filed application for certificate of exemption pursuant to Order No. 28, alleging that the coals produced by him are not subject to the provisions of the said Act. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237; and

*It further appearing*, That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said report have been filed with the Commission; and

The Commission, being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that the proposed findings of fact and the conclusion submitted by the examiner are, in all respects, true and correct, and the same hereby are adopted as the findings of fact and conclusion of the Commission;

*Now, therefore*, It is by order hereby certified:

That the coal produced at the mine operated by Emil Skoglund, which mine is located about five (5) miles east of Richland, in Section 3, Township 35 North, Range 44 East, Daniels County, in the State of Montana, is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937, and, therefore, is exempt from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated at Washington, D. C., this 11th day of January 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-178; Filed, January 13, 1939;  
12:35 p.m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF THE APPLICATION OF CARL JENSEN FOR A CERTIFICATE OF EXEMPTION PURSUANT TO ORDER NO. 28 OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January 1939.

*It appearing*, That on the 22nd day of March, 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock, a. m., for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that Carl Jensen, operating a coal mine in Section 17, Township 12 North, Range 45 East, Custer County, Montana, filed application for certificate of exemption pursuant to Order No. 28, alleging that the coal produced by him is not subject to the provisions of the said Act. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237; and

*It further appearing*, That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said report have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that such evidence is insufficient to enable the Commission to determine whether or not the coal produced from the aforesaid mine of applicant is subject to the provisions of the said Act.

*Now, therefore*, It is ordered:

That the matter of the application for exemption of Carl Jensen for the coal produced at his mine located in Section 17, Township 12 North, Range 45 East, Custer County, Montana, be and the same is hereby reopened for the purpose of further investigation as to the character of the applicant's coal.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal

Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to all known producers of coal, lignite or otherwise, in Montana, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 11th day of January 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-180; Filed, January 13, 1939;  
12:36 p.m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF THE APPLICATION OF CLYDE CLAPP FOR A CERTIFICATE OF EXEMPTION PURSUANT TO ORDER NO. 28 OF THE COMMISSION

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C. on the 11th day of January 1939.

*It appearing*, That on the 22nd day of March, 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April, 1938, commencing at the hour of 10:00 o'clock, A. M. for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28; and that Clyde Clapp, operating a coal mine at Section 33, Township 22, North, Range 55 East, M. P. M., Richland County, Montana, filed application for certificate of exemption pursuant to Order No. 28, alleging that the coals produced by him are not subject to the provisions of said Act. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237; and

*It further appearing*, That due and proper notice of said hearing was given to all interested parties, and the cause came on to be heard pursuant to said Order No. 237; and the evidence being adduced and being submitted to the examiner, the examiner filed his report in the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in conformance with the Rules of Practice and Procedure of the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said report have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that the proposed findings of fact and the

conclusion submitted by the examiner are, in all respects, true and correct, and the same are hereby adopted as the finding of fact and conclusions of the Commission;

*Now, therefore*, It is by order hereby certified:

That the coal produced at the mine operated by Clyde Clapp, which mine is located in Section 33, Township 22, North, Range 55 East, M. P. M., Richland County, in the State of Montana, is lignite within the meaning of Section 17 (b) of the Bituminous Coal Act of 1937, and therefore is exempt from the provisions of said Act.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to the Applicant herein, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated at Washington, D. C. this 11th day of January 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-181; Filed, January 13, 1939;  
12:36 p.m.]

[Docket No. 321-FD]

ORDER IN THE MATTER OF A PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE TO ENABLE THE COMMISSION TO DETERMINE WHETHER CERTAIN COALS IN THE STATE OF MONTANA ARE SUBJECT TO THE PROVISIONS OF THE NATIONAL BITUMINOUS COAL ACT OF 1937, AND FOR THE FURTHER PURPOSE OF HEARING APPLICATIONS FOR EXEMPTION PROVIDED BY ORDER NO. 28

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 11th day of January 1939.

*It appearing*, That on the 22nd day of March 1938, the Commission entered its Order No. 237 providing for a public hearing to be held at the Northern Hotel, Billings, Montana, on the 25th day of April 1938, commencing at the hour of 10:00 o'clock a. m., for the purpose of receiving evidence to enable the Commission to determine whether certain coals in the State of Montana are subject to the provisions of the Bituminous Coal Act of 1937, and for the further purpose of hearing applications for certificates of exemption as provided for by Order No. 28. The Commission assigned the cause to an examiner of the Commission for a hearing at the time and place designated by said Order No. 237, and

*It further appearing*, That due and proper notice of said hearing was given to all interested parties and the cause came on to be heard pursuant to Order

No. 237, and the evidence being adduced and being submitted to the examiner, the examiner filed his report of the above-entitled matter with the Secretary of the Commission, copies of which were thereafter served upon interested parties in compliance with the Rules of Practice and Procedure of the Commission. The examiner filed separate reports with respect to the applications for certificates of exemption filed pursuant to Order No. 28, which were heard by the examiner in conjunction with the hearing in this matter and which has been treated separately by the Commission. More than fifteen (15) days have elapsed since said service, and no exceptions to the said reports have been filed with the Commission; and

The Commission being fully advised of the evidence adduced at the hearing as the same is contained in the official transcripts of the testimony and documentary evidence filed herein, finds that the evidence with respect to the character of the coals underlying each of the six counties of Carter, Custer, Garfield, McCone, Powder River and Prairie is insufficient to enable the Commission to determine whether or not the underlying coal in these counties is subject to the provisions of the said Act.

*Now therefore*, It is ordered that the above-entitled matter be and the same is hereby reopened for the purpose of further investigation as to the character of the coals underlying the aforesaid counties in Montana.

The Secretary of the Commission shall forthwith mail a copy of this order to the Secretaries of the Bituminous Coal Producers' Boards for the several districts, to the Consumers' Counsel, to the Commissioner of Internal Revenue, to all known producers of coal, lignite or otherwise, in Montana, and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 11th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 39-177; Filed, January 13, 1939;  
12:35 p. m.]

CIVIL AERONAUTICS AUTHORITY.

[Special Order No. 401-E-1]

IN THE MATTER OF THE APPLICATIONS OF CONTINENTAL AIR LINES, INC., DOCKET NO. 2-401 (E)-2; AND BRANTIFF AIRWAYS, INC., DOCKET NO. 150, ET AL.

ORDER CONSOLIDATING APPLICATIONS AND NOTICE OF HEARING

JANUARY 11, 1939.

Congress having specifically provided by section 401 (e) (2) of the Act for the issuance by the Authority of a certificate of public convenience and necessity authorizing the transportation of mail and other classes of traffic between Wichita,

Kansas, and Pueblo, Colorado, via intermediate cities, and

Applications having been filed with the Authority by Continental Air Lines, Inc., and Braniff Airways, Inc., for a certificate of public convenience and necessity authorizing the transportation of mail, passengers and express between Wichita, Kansas, and Pueblo, Colorado, via Hutchinson, Dodge City and Garden City, Kansas, and La Junta, Colorado, and

The Authority having considered said applications and it appearing to the Authority that said applications and any other applications covering the same route can most advantageously be disposed of together in a public hearing thereon in which all applicants are made parties, and,

The Authority finding that its action in this matter is necessary to effectuate the purposes of the Act;

*It is hereby ordered*, That the applications of Continental Air Lines, Inc., and Braniff Airways, Inc., for a certificate of public convenience and necessity pursuant to section 401 (e) (2) of the Act, authorizing the transportation of mail, passengers and express between Wichita, Kansas, and Pueblo, Colorado, via Hutchinson, Dodge City and Garden City, Kansas, and La Junta, Colorado, and all other applications covering the same route which may be filed with the Authority on or before January 20, 1939, are hereby consolidated into one proceeding;

*And it is further ordered*, That said proceeding is assigned for a public hearing on January 24, 1939, at 10 o'clock a. m. (Eastern Standard Time) at the offices (Hearing Room: Department of Commerce Auditorium) of the Civil Aeronautics Authority in Washington, D. C., before Examiners Brown and Leasure.

For the Authority:

[SEAL] PAUL J. FRIZZELL,  
Secretary.

[F. R. Doc. 39-182; Filed, January 13, 1939; 12:47 p. m.]

[Docket No. 128]

NATIONAL AIRLINES, INC., PETITION FOR THE FIXING OF FAIR AND REASONABLE RATES OF COMPENSATION FOR THE TRANSPORTATION OF MAIL BY AIRCRAFT ON AIR MAIL ROUTE No. 31, FROM DAYTONA BEACH TO MIAMI, FLA., VIA ORLANDO, LAKE LAND, TAMPA, ST. PETERSBURG, SARASOTA AND FT. MYERS, FLA., AND ON AIR MAIL ROUTE No. 39, FROM JACKSONVILLE, FLA., TO NEW ORLEANS, LA., VIA TALLAHASSEE, MARIANNA AND PENSACOLA, FLA., MOBILE, ALA., AND GULFPORT, MISS.

NOTICE OF HEARING

JANUARY 11, 1939.

The above-entitled proceeding is assigned for public hearing on January 19,

1939, 10 o'clock a. m. (eastern standard time) at the offices (Hearing Room No. 5044) of the Civil Aeronautics Authority in Washington, D. C., before the Authority.

By the Authority:

[SEAL] PAUL J. FRIZZELL,  
Secretary.

[F. R. Doc. 39-183; Filed, January 13, 1939; 12:47 p. m.]

[Docket No. 129]

NORTHWEST AIRLINES, INC., PETITION FOR THE DETERMINATION OF FAIR AND REASONABLE RATES OF COMPENSATION FOR THE TRANSPORTATION OF MAIL BY AIRCRAFT ON AIR MAIL ROUTE No. 16, FROM CHICAGO, ILLINOIS, TO WINNIPEG, MANITOBA AND RETURN VIA MILWAUKEE, WISCONSIN, ROCHESTER, SAINT PAUL AND MINNEAPOLIS, MINNESOTA, AND FARGO, NORTH DAKOTA, AND ON AIR MAIL ROUTE No. 3, FROM FARGO, NORTH DAKOTA, TO SEATTLE, WASHINGTON, AND TO PORTLAND, OREGON, AND RETURN VIA BISMARCK, NORTH DAKOTA, MILES CITY, BILLINGS, BUTTE, HELENA, AND MISSOULA, MONTANA, AND SPOKANE, WENATCHEE AND YAKIMA, WASHINGTON

NOTICE OF HEARING

JANUARY 12, 1939.

The above-entitled proceeding is assigned for public hearing on January 24, 1939, 10 o'clock a. m. (eastern standard time) at the offices (Hearing Room No. 5044) of the Civil Aeronautics Authority in Washington, D. C., before the Authority.

By the Authority:

[SEAL] PAUL J. FRIZZELL,  
Secretary.

[F. R. Doc. 39-184; Filed, January 13, 1939; 12:47 p. m.]

[Docket No. 1-406(A)-1]

BRANIFF AIRWAYS, INC., PETITION FOR DETERMINATION OF RATES OF COMPENSATION FOR THE TRANSPORTATION OF MAIL BY AIRCRAFT OVER ROUTE No. 9, FROM CHICAGO, ILLINOIS TO DALLAS, TEXAS, AND ROUTE No. 15, FROM AMARILLO TO BROWNSVILLE, TEXAS, VIA FORT WORTH-DALLAS

NOTICE OF HEARING

JANUARY 12, 1939.

The above-entitled proceeding is assigned for public hearing on February 7, 1939, 10 o'clock a. m. (eastern standard time) at the offices (Hearing Room No. 5044) of the Civil Aeronautics Authority in Washington, D. C., before the Authority.

By the Authority:

[SEAL] PAUL J. FRIZZELL,  
Secretary.

[F. R. Doc. 39-185; Filed, January 13, 1939; 12:47 p. m.]

# FEDERAL POWER COMMISSION.

[Project No. 1175]

IN THE MATTER OF KANAWHA VALLEY POWER COMPANY, LICENSEE

ORDER FIXING DATE OF HEARING

JANUARY 12, 1939.

Commissioners: Clyde L. Seavey, Acting Chairman; Claude L. Draper, Basil Manly, John W. Scott.

It appearing to the Commission that the matters involved in the determination of the actual legitimate original cost of the Marmet and London project No. 1175; Kanawha Valley Power Company, Licensee, during the postlicense period from January 15, 1934, to April 30, 1936, are now at issue;

The Commission orders that: A public hearing on said matters be held on February 20, 1939, at 10 a. m. in the hearing room of the Commission, Hurley-Wright Building, 1800 Pennsylvania Avenue, N. W., Washington, D. C., including a rehearing on the item of interest during construction upon which a rehearing was granted by order dated April 7, 1936.

By the Commission.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 39-154; Filed, January 13, 1939; 10:15 a. m.]

[Docket No. G-117]

APPLICATION OF TEXAS GAS UTILITIES COMPANY

ORDER FIXING DATE OF HEARING

JANUARY 12, 1939.

Commissioners: Clyde L. Seavey, Acting Chairman; Claude L. Draper, Basil Manly, John W. Scott.

Upon application filed November 19, 1938, by the Texas Gas Utilities Company, a Delaware corporation authorized to transact business in the State of Texas and having its office in Del Rio, Texas, for an order of the Commission authorizing the exportation of natural gas from the State of Texas to the Republic of Mexico, pursuant to Section 3 of the Natural Gas Act, and

It appearing to the Commission that:

(a) On December 20, 1938, the Commission granted applicant temporary authorization to continue the exportation of natural gas from the State of Texas to the Republic of Mexico for a period of ninety days from and after that date, subject to the provision that the said order would automatically terminate prior to the expiration of said ninety days, if a public hearing is had and the Commission adopts an order after consideration of the full record herein;

(b) A public hearing should be held upon said application to enable the



Commission to determine whether the proposed exportation of natural gas by the applicant will be consistent with the public interest;

Now therefore the Commission orders that: A public hearing on said application be held on January 27, 1939, at 10:00 A. M. in the hearing room of the Federal Power Commission, Hurley-Wright Building, 1800 Pennsylvania Avenue, N. W., Washington, D. C.

By the Commission.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 39-155; Filed, January 13, 1939;  
10:15 a. m.]

## SECURITIES AND EXCHANGE COMMISSION.

### *United States of America—Before the Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 10th day of January 1939.

IN THE MATTER OF APPLICATIONS BY THE DETROIT STOCK EXCHANGE TO EXTEND UNLISTED TRADING PRIVILEGES TO ANACONDA COPPER MINING CO., COMMON STOCK, \$50 PAR VALUE; BUDD WHEEL CO., COMMON STOCK, NO PAR VALUE; CITIES SERVICE CO., COMMON STOCK, \$10 PAR VALUE; THE ELECTRIC AUTO-LITE CO., COMMON STOCK, \$5 PAR VALUE; ELECTRIC POWER & LIGHT CORP., COMMON STOCK, NO PAR VALUE; F. L. JACOBS CO., COMMON STOCK, \$1 PAR VALUE; MONTGOMERY WARD & CO., INC., COMMON STOCK, NO PAR VALUE; THE PENNSYLVANIA RAILROAD CO., CAPITAL STOCK, \$50 PAR VALUE; SEARS ROEBUCK & CO., CAPITAL STOCK, NO PAR VALUE; UNITED STATES RUBBER CO., COMMON STOCK, \$10 PAR VALUE; UNITED STATES STEEL CORP., COMMON STOCK, NO PAR VALUE; HIRAM WALKER-GOODERHAM & WORTS, LTD., COMMON STOCK, NO PAR VALUE; YELLOW TRUCK & COACH MFG. CO., CLASS B COMMON STOCK, \$1 PAR VALUE

### ORDER SETTING HEARING ON APPLICATIONS TO EXTEND UNLISTED TRADING PRIVILEGES

The Detroit Stock Exchange, pursuant to Section 12 (f) of the Securities Exchange Act of 1934, as amended, and Rule X-12F-1 promulgated thereunder, having made application to the Commission to extend unlisted trading privileges to the above-mentioned securities; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

It is ordered, That the matter be set down for hearing at 10 A. M. on Thursday, February 16, 1939, in Room 1102A, Securities and Exchange Commission

Building, 1778 Pennsylvania Avenue, N. W., Washington, D. C., and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

It is further ordered, That Charles S. Moore, an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 39-157; Filed, January 13, 1939;  
10:50 a. m.]

### *United States of America—Before the Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 10th day of January, A. D. 1939.

[File No. 32-121]

### IN THE MATTER OF CENTRAL OHIO LIGHT & POWER COMPANY

#### SUPPLEMENTAL ORDER

Central Ohio Light and Power Company having filed an application under Section 6 (b) of the Public Utility Holding Company Act of 1935 for exemption from the provisions of 6 (a) of the Act of the issue and sale of two series of 6% unsecured promissory notes in a total principal amount of \$127,923.32;

The Commission having on December 30, 1938,<sup>1</sup> adopted its findings and opinion therein and an order exempting the issue and sale of the said securities from the provisions of Section 6 (a) of the Act, which findings and opinion and order were undated,

It is hereby ordered that said findings and opinion and order be and they hereby are corrected to carry the date of December 30, 1938, on which date they were adopted and entered by the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 39-160; Filed, January 13, 1939;  
10:51 a. m.]

### *United States of America—Before the Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 12th day of January, A. D. 1939.

<sup>1</sup> 4 F. R. 58 DI.

[File No. 63-2]

### IN THE MATTER OF INTERNATIONAL UTILITIES CORPORATION

#### NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 9 (c) and Rule U-9C-4 of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter be held on January 27, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, N. W., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Robert P. Reeder or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before January 23, 1939.

The matter concerned herewith is in regard to an application pursuant to Rule U-9C-4 for an order by the Commission approving an investment program whereby the applicant proposes to reinvest such funds, as are now available or will hereafter become available from the sale of securities held in its portfolio, in securities which are listed or admitted to unlisted trading privileges on a national securities exchange or on the Montreal or Toronto stock exchanges or which are actively traded in on the over-the-counter market.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 39-153; Filed, January 13, 1939;  
10:51 a. m.]

### *United States of America—Before the Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 12th day of January, A. D. 1939.

[File No. 63-3]

IN THE MATTER OF SECURITIES CORPORATION  
GENERAL

## NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 9 (c) and Rule U-9C-4 of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

*It is ordered* That a hearing on such matter be held on January 27, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

*It is further ordered*, That Robert P. Reeder or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with

the Commission on or before January 23, 1939.

The matter concerned herewith is in regard to an application pursuant to Rule U-9C-4 for an order by the Commission approving an investment program whereby the applicant proposes to reinvest such funds, as are now available or will hereafter become available from the sale of securities held in its portfolio, in securities which are listed or admitted to unlisted trading privileges on a national securities exchange or on the Montreal or Toronto stock exchanges or which are actively traded in on the over-the-counter market.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 39-158; Filed, January 13, 1939;  
10:50 a. m.]